

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION**

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|--------------------------------------|---|----------------------|
| DAVID McCLAIN, Register No. 1012906, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | No. 09-4098-CV-C-NKL |
| |) | |
| JOHN BOWEN, Warden, |) | |
| |) | |
| Defendant. |) | |

ORDER

On June 3, 2009, plaintiff David McClain was ordered to pay an initial partial filing fee of \$15.78. Plaintiff was advised that “[i]f the initial partial filing fee is not received within thirty days from the date of this Order, this case will be dismissed without further notice.” Plaintiff has failed to respond to the order. A district court has power to dismiss an action for failure of the plaintiff to comply with “a court order.” Fed. R. Civ. P. 41(b). As stated in M.S. v. Wermers, 557 F.2d 170, 175 (8th Cir. 1977), “[s]uch action may be taken on the court's own motion, Welsh v. Automatic Poultry Feeder Co., 439 F.2d 95, 96 (8th Cir. 1971).” Pro se litigants are not excused from complying with court orders. Farnsworth v. Kansas City, Mo., 863 F.2d 33, 34 (8th Cir. 1988); Henderson v. Renaissance Grand Hotel, 267 Fed. Appx. 496, 497 (8th Cir. 2008) (unpublished) (Westlaw).

“The ‘sanction imposed by the district court must be proportionate to the litigant’s transgression’. . . .” Doe v. Cassel, 403 F.3d 986, 988-90 (8th Cir. 2005) (quoting Rodgers v. Curators of Univ. of Mo., 135 F.3d 1216 (8th Cir. 1998)). Dismissal, without prejudice, is appropriate here. Amick v. Ashlock, 113 Fed. Appx. 191, 192 (8th Cir. 2004) (unpublished) (Westlaw) (dismissal, without prejudice, for failure to pay initial filing fee ordered by the court); Cosby v. Meadors, 351 F.3d 1324, 1328-31 (10th Cir. 2003) (affirming dismissal of prisoner’s complaint for failure to pay assessed filing fee).

Plaintiff is notified that if he decides to file an appeal to the United States Court of Appeals for the Eighth Circuit, he will be required to pay the full \$455.00 appellate filing fee,

regardless of the outcome of the appeal. Henderson v. Norris, 129 F.3d 481, 484 (8th Cir. 1997). In Henderson, the Eighth Circuit stated that by filing a notice of appeal, the prisoner/appellant consents to the deduction of the initial partial appellate filing fee and the remaining installments from the prisoner's account by prison officials.

THEREFORE, IT IS ORDERED that plaintiff's claims in this case are dismissed, without prejudice.

/s/ _____

NANETTE K. LAUGHREY
United States District Judge

Dated: September 2, 2009
Jefferson City, Missouri